

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 United States of America,

4 Plaintiff,

5 v.

6 Channon Somee,

7 Defendant.

Case No. 2:18-cr-378-APG-VCF

**ORDER AFFIRMING MAGISTRATE  
JUDGE'S ORDER AND ACCEPTING  
REPORT AND RECOMMENDATION**

(ECF No. 38, 73, 86)

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9 On January 9, 2020, Magistrate Judge Ferenbach recommended that I deny defendant  
10 Channon Somee's motion to dismiss as moot because the superseding indictment cures the alleged  
11 defect in the prior indictment. ECF No. 73 at 4, 6. Mr. Somee did not object to that  
12 recommendation. Thus, I am not obligated to conduct a *de novo* review of Judge Ferenbach's  
13 Report and Recommendation. 28 U.S.C. § 636(b)(1) (requiring district courts to "make a de novo  
14 determination of those portions of the report or specified proposed findings to which objection is  
15 made"); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) ("the district  
16 judge must review the magistrate judge's findings and recommendations de novo if objection is  
17 made, but not otherwise" (emphasis in original)).

18 Magistrate Judge Ferenbach also entered an Order denying Mr. Somee's motion to sever  
19 the gun charge from the drug charges for the trial in this case. ECF No. 73. Mr. Somee appealed  
20 that order. ECF No. 86. I affirm Judge Ferenbach's Order as supplemented below.

21 Mr. Somee is charged with three drug crimes and one count of being a felon in possession  
22 of a firearm. He seeks to sever the drug charges from the gun charge because he wishes to testify  
23 about the drug charges but not about the gun charge. He contends that he has important testimony

1 to give regarding an entrapment or similar defense to the drug charges. While I accept his proffer  
2 on that issue, Mr. Somee has not made the requisite showing that he has a “strong need to refrain  
3 from testifying” on the gun charge. *United States v. Gilman*, 869 F.2d 1498 (table), 1989 WL  
4 21731 at \*3 (9th Cir. 1989) (“Admittedly, a defendant may have a strong need to refrain from  
5 testifying about a count as to which the government’s evidence is very weak—the risks involved  
6 in exposing oneself to the hazards of cross-examination may outweigh any benefit in taking the  
7 stand. But where the evidence is sufficiently strong, . . . the need to refrain from testifying is much  
8 weaker.”).

9       The crux of the present dispute is that Mr. Somee believes “the government’s case is weak  
10 with regard to the *Rehaif* element under 18 U.S.C. § 922(g), namely, whether Mr. Somee knew of  
11 his felon status at the time he possessed the firearm.” ECF No. 86 at 10 (citing to *Rehaif v. United*  
12 *States*, 139 S. Ct. 2191, 2192 (2019)). The Government responds that it has significant evidence  
13 of Mr. Somee’s knowledge of his felon status, including that he entered into a written plea  
14 agreement and pleaded guilty to a felony, “had at least two sentencing dates where he  
15 acknowledged his potential sentencing exposure . . . , served approximately 15 years in prison for  
16 attempted murder, and was released only months before engaging in the conduct resulting in” this  
17 case. ECF No. 92 at 13-14. The Government’s proof on this element is not weak. It is sufficiently  
18 strong to make Mr. Somee’s “need to refrain from testifying . . . much weaker.” *Gilman*, 1989 WL  
19 21731 at \*3. Therefore, I agree with Judge Ferenbach that severance is not appropriate.

20       Having reviewed Mr. Somee’s appeal, Magistrate Judge Ferenbach’s Order, and the  
21 underlying papers, I find that the Order is not “clearly erroneous or contrary to law.” Local Rule  
22 IB 3-1(a).

1 I THEREFORE ORDER that Magistrate Judge Ferenbach's Report and Recommendation  
2 **(ECF No. 73) is accepted.** Mr. Somee's motion to dismiss **(ECF No. 38) is denied.**

3 I FURTHER ORDER that Magistrate Judge Ferenbach's Order denying Mr. Somee's  
4 motion to sever **(ECF No. 73), as supplemented above, is affirmed** in its entirety, and the  
5 defendant's appeal **(ECF No. 86) is denied.**

6 Dated: March 4, 2020.



7 ANDREW P. GORDON  
8 UNITED STATES DISTRICT JUDGE  
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